IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Summons for Judgment No. 815 of 2004
in
Summ. Suit No.43 of 2003

Crompoton Greaves Limited ..Plaintiff

vs.

M/s Telecon Electric
Industries Limited ..Defendant

Mr.Birendra Saraf i/b M/s V.Deshpande and Co. for plaintiff.
Mr.R.T.Parekh for defendant.

CORAM: S.U.KAMDAR J.
5th OCTOBER, 2005

P.C.

. The present suit is filed for the claim of Rs.14,51,000.00. The claim arises in respect of the goods sold and delivered under the invoices, the details of which are set out in para 9 of the plaint. The learned advocate appearing for the defendant has contended that the claim is barred by law of limitation. It is his contention that the invoices are dated 12th October, 1998 to 29th March, 1999 and, therefore, the suit which has been filed on 5th September, 2002 in this Court is barred by law of limitation. I am unable to accept the contention of the learned counsel for the defendant because there is an acknowledgement of liability on 8th September, 1999 which is at page

34 Exh.E to the plaint. The said acknowledgement of liability has been signed. The suit is filed on 5th September, 2002 and, therefore, the suit is within time. Apart therefrom there are also part payments from time to time and accordingly the claim which has been made by the defendant that the suit is beyond time required to be rejected. It has thereafter been contended by the learned counsel for the defendant that the letter dated 8th September, 1999 is, inter alia, conditional upon reconciliation of the account with Mr.Vasta will be discussed on 15th September, 1999. In my opinion, even if the aforesaid sentence is mentioned in para 3 of the said letter it does not become ceased to be an acknowledgement of liability. It may be that it may not be clear admission of the liability on the part of the defendant. Once it is an acknowledgement of liability as contained in section 18 of the Limitation Act, the suit claim is obviously within time. The third contention raised by the learned counsel is by relying upon the papers and proceedings of Company Petition No.308 of 2002. My attention has been drawn to the said proceedings, particularly the particulars of claim set out therein. It has been contended that if the claim in the said petition is also made of the same amount of Rs.14,15,514.73 then how in the present case the claim is made of Rs.14,51,000/-

particularly when the company petition has been filed in 2001 and the suit is filed in 2002. The learned counsel for the plaintiff has contended that the claim is much more than Rs.14,51,000/- but in view of the acknowledgement of liability dated 8th September, 1999 they have restricted the claim to Rs.14,51,000/- so as not to give an opportunity to the defendant to raise the dispute in respect of the suit claim. The learned counsel has thereafter drawn my attention once again to a notice dated 31st March, 2000 which has been issued in the present case and on second page of the notice once again the amount of Rs.14,95,514,73 has been demanded. It has been contended if the acknowledgement of liability is dated 8th September, 1999 then under what circumstances the plaintiff could have issued the notice for Rs.14,95,514.73 subsequent to the socalled acknowledgement. In my opinion, the aforesaid contention raised by the learned counsel for the defendant has no merit. There is no law under which the plaintiff can restrict his claim at a lesser amount that what is demanded in the demand notice. In view of the fact that there is no denial to the execution of the letter dated 8th September, 1999 representing the minutes of meeting held between the parties, it is not possible to accept the socalled questions raised by the

defendant as if the same raises triable issues. I do not find any merit in the present case. However, with a view to give an opportunity to the defendant to defend the suit I direct the defendant to deposit a sum of Rs.14,51,000/- within four weeks failing which the plaintiff will be entitled to the decree. The amount so deposited will be invested by the Prothonotary and Sr.Master in fixed deposits of any nationalised bank initially for a period of 3 years and renew the same from time to time till further orders.

. If the amount is deposited as aforestated, then the suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed within four weeks from the date of deposit. Affidavits, list of documents to be filed within four weeks thereafter. Inspection and discovery within four weeks thereafter. Suit to be placed on the board of learned Judge taking Commercial Causes.